DHS Enhances Opportunities for H-1B1, E-3, CW-1 Nonimmigrants and Certain EB-1 Immigrants

Insights
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On January 15, 2016, the Department of Homeland Security (DHS) posted a final rule in the Federal Register which revises its regulations affecting highly skilled workers in the nonimmigrant classifications for specialty occupations from Chile/Singapore (H-1B1), Australia (E-3), nonimmigrant workers in the Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker (CW-1) classification, and the immigrant classification for employment-based first preference (EB-1) outstanding professors and researchers;

The final rule amends DHS regulations as follows:

- DHS is including H-1B1 and principal E-3 classifications in the list of classes of foreign nationals authorized for employment incident to status with a specific employer. This means that H-1B1 and principal E-3 nonimmigrants are allowed to work for the sponsoring employer without having to separately apply for employment authorization.
- DHS is authorizing continued employment with the same employer for up to 240 days for H-1B1 and principal E-3 nonimmigrants whose status has expired while their employer's timely filed extension of stay request remains pending.
- DHS is providing this same continued employment authorization for CW-1 nonimmigrants whose status has expired while their employer's timely filed Form I-129CW, Petition for a CNMI-Only Nonimmigrant Transitional Worker, request for an extension of stay remains pending.
- Existing regulations on the filing procedures for extensions of stay and change of status requests now include principal E-3 and H-1B1 nonimmigrant classifications.
- Employers petitioning for EB-1 outstanding professors and researchers may now submit initial evidence comparable to the other forms of evidence already listed in 8 CFR 204.5(I)(3)(I), much like certain employment-based immigrant categories that already allow for submission of comparable evidence.

According to DHS, the regulatory changes are meant to “improve the programs serving the H-1B1, E-3 and CW-1 nonimmigrant classifications and the EB-1 immigrant classification” and “remove unnecessary hurdles that place such workers at a disadvantage when compared to similarly situated workers in other visa classifications.”

If you have any questions about your obligations as an employer, please contact your Fisher Phillips legal representative for assistance.